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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,736	02/14/2002	Antonio Montoli	00512-P0062A	1617
24126	7590	03/24/2004	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			SPISICH, MARK	
986 BEDFORD STREET			ART UNIT	
STAMFORD, CT 06905-5619			PAPER NUMBER	

1744

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/075,736

Applicant(s)

MONTOLI ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2,4,6/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-15 and 17-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miraglia (USP6,481,445) in view of Gueret (USP 6,073,634). The patent to Miraglia discloses a brush (10) for applying mascara comprising a twisted wire core (12) as well as a plurality of bristles (17) of from 8 to 18 mil diameter (which generally overlaps the range recited in claims 1 and 17) and which is provided with a bristle density of 4 to 27 bristles per turn (which also overlaps the range recited) and wherein the bristles have a durometer of between 62D and 82D. The patent to Miraglia discloses the invention substantially as claimed with the exception of the particular durometer (between 92D and 120R or between 100R and 120R). Miraglia does discuss a prior art brush bristles with a hardness of greater than 85D and also provides a correlation between the two scales (this helps for claim 17) as it states that 85D equates to 115R on the Rockwell scale). The patent to Gueret a brush for the application of mascara wherein the bristles thereof may vary from .04 to .7 mm diameter and have typical hardness of from 10 Shore A to 90 Shore D (see column 5, lines 22-30). Gueret also discusses the benefit of using a rigid bristle. It would have been obvious to one of ordinary skill to have modified the bristles of Miraglia as such to

Art Unit: 1744

ensure a more efficient smoothing of the lashes and a very good curving back of the lashes (Gueret, column 5, lines 27-28). Once the prior art teaches the basic premise of the invention, obvious variations thereof fail to define a patentable step over the prior art. It is further noted that Miraglia discloses solid bristles (column 4, line 54) (claim 13) as well as bristles with three voids (fig 6) (claims 14 and 15).

3. Claims 16 and 32 are 35 U.S.C. 103(a) as being unpatentable over the prior art claims 14 and 30 further in view of Gueret (USP 5,063,947). The prior art discloses the invention substantially as claimed with the exception of the end roughing of the bristles. The patent to Gueret discloses the end splitting of bristles. It would have been obvious to one of ordinary skill to have split the ends of the bristles of the prior art (Miraglia) to provide improved contact with the lashes (column 5, lines 61-62).

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited patents are pertinent to the various features of the claimed brush (diameter, durometer, density).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich  
Primary Examiner  
Art Unit 1744

MS